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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

2000.10.001.WT0

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on March 10, 2006Signature Kathy HamiltonTyped or printed name Kathy Hamilton

Application Number

09/653,764

Filed

September 1, 2000

First Named Inventor

Sudhindra P. Herle

Art Unit

2134

Examiner

Michael J. Simitoski

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

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attorney or agent of record.

Registration number 39,775☐

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March 10, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

☒\*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Claims 1, 3-9, 11-17 and 19-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over an article entitled: "Performance evaluation of TCP/RLP protocol stack over the CDMA wireless link" by *Bao* (hereinafter Bao) in view of an article entitled: "Wireless Device Configuration (OTASP/OTAPA) via ACAP" by *Gellens* (hereinafter Gellens) in further view of U.S. Patent No. 5,241,598 to *Raith* (hereinafter Raith) and U.S. Patent No. 6,609,148 to *Salo, et al.* (hereinafter Salo). These rejections are legally and factually deficient. Examiner Simitoski misstates the teachings of the art and there is no proper motivation to combine these references. The lack of proper motivation is discussed at length in the response to final Office Action and will be addressed again in an Appeal Brief (if necessary).

All of the present claims specifically require the transmission of a software program, a software correction patch and provisioning data from a server associated with a wireless network. The mobile station comprises an RF transceiver which receives and converts wireless messages to a plurality of Internet Protocol (IP) packets. The mobile station is required to have an encryption controller that decrypts the IP packets (according to one of four specific encryption methods) and a data burst message protocol controller that converts the decrypted IP packets to at least one data burst message.

In his Advisory Action, Examiner Simitoski states that "applicant's claim requires no specific means, hardware, software or architecture for the encryption controller to perform its encryption." Examiner Simitoski is simply incorrect. The present claims clearly require that the encryption controller is capable of converting IP packets from an encrypted format to a decrypted format

according to at least one of four specific encryption methods. Examiner Simitoski's statements are factually incorrect and result in a factually deficient rejection.

Examiner relies on Bao solely for disclosing the concept of converting IP packets into at least one data burst message. In his Advisory Action, Examiner Simitoski contends that Bao teaches a "data transfer protocol not particularly concerned with implementation (specific applications)." On the contrary, Bao provides a narrow (and very general) guideline in predicting TCP/RLP performances in wireless communication environments where, for example, the Frame Error Rate (FER) is significantly higher than those found in typical wireline environments. Bao teaches very little (if anything) related to the claims. Again, Examiner Simitoski's statements are factually incorrect and result in a factually deficient rejection. Moreover, there is no motivation to *seek out* and combine discrete elements of this reference with any other reference as required by the present claims.

Examiner Simitoski relies on Gellens solely for disclosing an encryption controller capable of converting said IP packet from an encrypted format to a decrypted format. While Gellens discloses certain discrete elements of the present claims, Gellens indicates that end-to-end encryption "should be considered as a future enhancement" and "is still needed," it does not disclose *any* specific means for doing so, nor does it suggest or even hint at any *possible* means for doing so. Examiner Simitoski's statements are again factually incorrect and result in a factually deficient rejection. Moreover, there is no motivation to *seek out* and combine this reference with any other reference as required by the present claims.

Raith is included by Examiner Simitoski *solely* for disclosing multiple cells in cellular radio

communication. Raith, however, teaches a narrowly tailored system that resynchronizes rolling keys in an authentication algorithm executed in a radio network providing service to the mobile station. Once again, Examiner Simitoski's statements are factually incorrect and result in a factually deficient rejection. Moreover, there is no motivation to *seek out* and combine this reference with any other reference as required by the present claims.

Finally, Salo is included by Examiner Simitoski *solely* for teaching the use of the IP Sec tunneling protocol. Salo, however, is narrowly directed to a computer system comprising a plurality of components, including a data network, an enterprise gateway server, a remote gateway server and a messaging server in which an enterprise server software converts a plurality of data requests for messaging and collaboration data into a single higher level request. Thus, there is no teaching *within* Salo of a *mobile station* comprising an encryption controller capable of converting said IP packet from an encrypted format to a decrypted format according to at least one of the specific encryption methods required by the present claims. Examiner Simitoski's statements are yet again factually incorrect and result in a factually deficient rejection. Moreover, there is no motivation to *seek out* and combine this reference with any other reference as required by the present claims.

Examiner Simitoski has arbitrarily cited four references in support of the §103 rejection by selecting discrete elements from each and *prospectively* combining these discrete elements (and *seeking out* still others) as required by the present claims. As a result of the foregoing, Examiner Simitoski's rejections of all claims are both legally and factually deficient and it would therefore be inappropriate to put the Applicant to the time and expense of an appeal at this time.

### CONCLUSION

As a result of the foregoing, the Applicant asserts that the claims in the Application are in condition for allowance over all art of record, and respectfully request this case be returned to Examiner Simitoski for allowance or, alternatively, further examination.

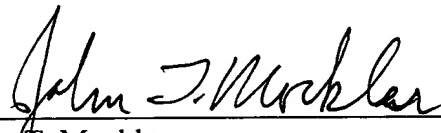
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 10 March 2006

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